

Carpet Regulation Overview of Comments, 15-day Comment Period (Sept 19 - Oct 4, 2011)

Comment Number	Commenter Affiliation	First name	Last name	Summary of Comment	CalRecycle Response	Revisions Needed	Section/ Area
W16-01	Californians Against Waste	Teresa	Bui	As we've mentioned before, we do not see a need for defining diversion and transformation in this regulation. What is the value of defining transformation when there will be no funding for transformation? Why define diversion when funding should be based on recycling?	<p>CalRecycle staff provided the definitions because AB2398 states "diversion from landfills" as a goal and does not offer a definition of what that means. Diversion has different meanings and providing a definition removes any question but that the California definition applies.</p> <p>Transformation is a current practice for managing some carpet and in some circumstances local jurisdictions may receive up to 10 percent credit to their mandatory solid waste diversion requirements. It is a significant concern to some local jurisdictions that this existing credit continue. Discussion on transformation and the inclusion of 18943(a)(4)(C) is intended to make it clear that the existing credit is still allowable.</p>	Yes, as explained in response to W18-01	Sections 18941 (f) and 18941 (l)
W16-02	Californians Against Waste	Teresa	Bui	The regulation seems contradictory in terms of what CAAF is. CAAF is explicitly defined a diversion in the definition, yet on Section 18943 Criteria for Plan Approval (4)(B ) page 7, line 1, the following sentence implies that CAAF is transformation: "through CAAF and other forms of transformation".	<p>CalRecycle staff acknowledge that CAAF is unique in that it is not a process like transformation (incineration, gasification, pyrolysis, plasma arc, cement kiln processing, etc.). Rather it is a feedstock/fuel that can be used in these processes. It also can be sold as a commodity (like a form of recycling); however, as a product that is intended to be destroyed. CalRecycle staff defined CAAF as a diversion activity, but not recycling, in part for these reasons.</p> <p>The sentence referenced in 18943(a)(4)(B) acknowledges that CAAF is intended to be used as a fuel in transformation and other high-temperature processes, making it like a transformation activity.</p>	No	18941(e) and 18943(a)(4)(B)
W16-03	Californians Against Waste	Teresa	Bui	Section 18943 Criteria for Plan Approval (4)(C) The second sentence appears to be further attempting to restate existing statute, but outside the context of local disposal accounting might actually be creating a new regulatory requirement. The requirement for front-end separation applies to local governments that want to reduce their "disposal" accounting for waste sent to a transformation facilities and is not a requirement imposed on transformation facilities more broadly. More importantly, whether or not something counts for disposal is immaterial for this regulation.	CalRecycle staff agree that the second sentence applies to a different program and should not be included in this regulation. The second sentence will be deleted.	Yes	18943(a)(4)( C)

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W16-04	Californians Against Waste	Teresa	Bui	<p>There seems to be inconsistency in several parts of the regs regarding diversion and transformation. For example:  “Section 18944 Annual Report Compliance Criteria (a) (4)(C) (5)(A)(8) Describe efforts to increase diversion of post-consumer carpet from landfills. “</p> <p>It should, at a minimum, say “Describe efforts to increase diversion of post-consumer carpet <del>from landfills</del>”  Or “Describe efforts to increase diversion of post-consumer carpet from landfills <u>and transformation</u>”</p> <p>But to be consistent with the intent of the statute it should really read: “Describe efforts to increase <u>recycling</u> of post-consumer carpet”</p> <p>There are several other places that also say “divert from landfill” or “diversion from landfill,” and this comment applies there as well.</p>	<p>CalRecycle staff finds that section 42970, while placing emphasis on recycling activities, does not exclude other allowable waste management practices as long as they conform with the state's hierarchy for solid waste management:</p> <p>"The purpose of this chapter is to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to Section 40051." (emphasis added)</p> <p>CalRecycle does not have the authority to eliminate the use of carpet as a fuel. When used as a fuel in California, it must conform to all existing legal requirements which provide for environmental protection. Considerable resources go into producing carpet, but not all parts of carpet can be recycled, so CAAF provides an outlet for further harvesting the BTU resources contained in carpet. In this respect, it may be preferable to landfilling, but more information would be needed to make such a determination.</p> <p>CalRecycle staff proposes to add language to help ensure emphasis is placed on preferred solid waste management practices, by including a sentence that specifies that funds designed for CAAF must be supported with documentation that provides evidence of a net environmental and economic benefit over landfilling and that without an incentive more materials would be landfilled. This would also be reported on in annual reports.</p>	Yes	18943(a)(7)(F)
W16-05	Californians Against Waste	Teresa	Bui	<p>There are several other places that also say “divert from landfill” or “diversion from landfill,” and this comment applies there as well.</p>	See response to W16-01.	Yes, as explained in response to W18-01	Section 18941(f)

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W17-01	Californians Against Waste	Mark	Murray	<p>Several citations from the California Public Resources Code which illustrates that ‘diversion’ in the statute generally refers to an action whereby materials are source reduced, recycled or composted from Solid Waste Disposal. And of course the term Solid Waste Disposal includes transformation. In those rare instances where the legislature has intended that some other activity or some capped percentage of some activity ‘count’ as diversion, the legislature has specifically designated that activity as such.</p> <p>Diversion Means: PRC 40124, PRC 40127; Solid Waste Disposal Means: PRC 40192;State Diversion Requirements: PRC 41780; Diversion ‘credit’ for Beneficial Reuse: PRC 41781.3; Specified and Limited Diversion Credit for Transformation: PRC 41783; Specified and limited Diversion Credit for Biomass: PRC 41783.1; Specified and Limited Diversion Credit for Sewage Sludge: 41781.1</p>	<p>CalRecycle staff believes that based on the context of this program the sections cited were not intended to apply. PRC Section 42970 specifies that carpet should be “diverted from landfills” not from “transformation” or “solid waste disposal as defined by PRC Section 40192”. Landfilling is a very specific way to dispose of waste.</p> <p>Regarding your application of definitions, “Diversion Means: PRC 40124, PRC 40127; Solid Waste Disposal Means: PRC 40192,” note that PRC 40100 specifies that unless the context otherwise requires, the definitions in this article [PRC Sections 40100-40201] govern the construction of this division,” including carpet found in Part 3. In other words, we use the definitions in PRC Sections 40100-40201 (in Part 1), unless the context otherwise requires changes.</p> <p>The sections referenced in the comment are found in Part 2 of the division and do not apply to the Part 3, which covers carpet. Furthermore, there are challenges in trying to use the definitions in Part 2, which focuses on plans prepared by local jurisdictions for carpet. For example, it is unclear what sections PRC Section 40124 was intended to apply to; Section 1 of Stats. 1996, c. 978 (A.B. 1647) indicates that in some circumstances diversion means “diversion of solid waste from solid waste disposal” and in other circumstances means “diversion of solid waste from a solid waste disposal facility.” It is unclear what meaning would have been intended for the carpet program, which was conceived over a decade later and regulates private industry, not governmental agencies. PRC Section 40127 specifically applies to the “recycling element of a jurisdiction’s integrated waste management plan.” PRC Section 40192 specifies that it only applies to “Part 2 (commencing with Section 40900)” and not necessarily to all of Division 30. The carpet program is under Part 3. The PRC Sections 41780 et. seq. refer to the Integrated Waste Management Plans and were intended to apply to plans “prepared and adopted by local agencies.” (PRC Section 40900.) These sections provide policy guidance for “state, regional and local agenc[ies].”</p>	Yes, as explained in response to W18-01	Section 18941(f)

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W18-01	LA Co Solid Waste Mgmt Committee	Mike	Mohajer	<p>While we appreciate CalRecycle’s acknowledgement that the purpose of AB 2398 is to divert postconsumer carpet from landfills, the amended Section continues to include transformation facilities. Specifically, the amended Section reads: “<b>Diversion</b> or ‘<b>divert</b>’ means any activities which reduce or eliminate the amount of solid waste <b>disposal</b> for purposes of Division 30, including Article 1 (commencing with Section 41780) of Chapter 6 of the Public Resources Code.” (emphasis added)</p> <p>However, pursuant to Sections 40120.1 and 40192 of the PRC, “disposal”, by definition, includes landfills as well as transformation facilities. Therefore, the proposal is inconsistent with the purpose of AB 2398. Additionally, while we acknowledge revisions that affirm that jurisdictions continue to be entitled to receive up to 10% disposal reduction credit for waste managed through existing transformation facilities in the State, this is separate and distinct from the ability of carpet manufacturers to comply with the requirements of AB 2398 to divert carpet waste from landfills by processing such waste at transformation facilities, as Alternative Fuel, or through any other conversion technology or process other than landfill disposal. It is not necessary to establish a definition for conversion technologies or any other process in order to acknowledge that such processes are not considered landfills and therefore comply with the purpose of AB 2398. Additionally, the proposed “Diversion” definition by citation of PRC 41780 further contradicts AB 2398’s stated legislative purpose. Based on the foregoing, the stated definition in this Section needs to be revised to read as follows:</p> <p>“Diversion or ‘divert’ means any activities which reduce or eliminate the amount of solid waste disposal <b>at permitted landfills</b> for purposes of Division 30, <u>Part 3, Chapter 20 including Article 1</u> (commencing with Section <del>41780</del> <b>42970</b>) <del>of Chapter 6</del> of the Public Resources Code.” (Note - Additions are shown in bold and underlined. Deletions are shown by strikethrough)</p>	<p>CalRecycle staff acknowledge that AB2398 states its purpose is"... to increase the amount of postconsumer carpet that is <b>diverted from landfills</b> and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices..." (emphasis added) The reference to diversion does not say "diverted from solid waste disposal" and is focused on diversion from landfills. For purposes of this article, CalRecycle staff agree to incorporate the edit.</p> <p>Additionally, CalRecycle staff will add a statement to explain that this definition doesn't apply to the definition of diversion found in Public Resources Code, Division 30, Part 2 pertaining to local jurisdictions.</p> <p>(Also see response to W16-01 and W17-01 and W22-01)</p>	Yes.	Section 18941(f)

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W18-02	LA Co Solid Waste Mgmt Committee	Mike	Mohajer	<p>Section 18943(a)(4)(A) – Criteria for Plan Approval</p> <p>Again, to be consistent with the requirements of AB 2398, in our letter of September 1, 2011, we had provided justifications and requested that the subject Section be revised to read:</p> <p>“Proposed measures that will enable the management of post-consumer carpet in a manner consistent with the state’s <u>current</u> solid waste management hierarchy pursuant to PRC Section 40051. <del>and demonstrate that over time source reduction, reuse, and recycling will increase, over environmentally safe transformation and land disposal.</del>”</p> <p>Unfortunately, our recommendation was misinterpreted by CalRecycle and thus no revision was provided. The CalRecycle’s table entitled “Summary and Response to Comments” only partially summarizes the above comment (Comment No. W01-03) and fails to recognize the deletions that were requested and were shown via strikethrough. As a result, CalRecycle’s response reads “The suggested edit is identical to existing proposed regulatory language with the exception of the word ‘current’, which is implicit in the draft language.” Again for the reasons provided in the Task Force letter of September 1, 2011, the subject Section should be revised by deleting the portion with strikethrough as shown above.</p>	<p>The word "current" is not needed as the law references the state's waste management hierarchy by section and whatever is stated in the that section applies.</p> <p>The commenter's interpretation of existing hierarchy is not a widespread interpretation and for this reason CalRecycle staff added a statement to provide clarity that for this regulation the emphasis is on source reduction, reuse, and recycling activities. CalRecycle is trying to acknowledge that capacity for recycling and the efficiency of the recycling may need to be expanded and a stewardship plan should be designed accordingly. Also, the language in this section applies to the plan, not to an individual recycler. This means that an individual recycler may have an operation with low recycling efficiency and where CAAF may be a larger output than recycled materials. CalRecycle will be reviewing the whole plan and whether it conforms to the solid waste management hierarchy.</p>	No	Section 18943(a)(4)(A)
W19-01	Los Angeles County	Margaret	Clark	See comments from W18-01	See response to W18-01.	Yes	Section 18941(f)
W19-02	Los Angeles County	Margaret	Clark	See comments from W18-02	See response to W18-02.	No	Section 18943(a)(4)(A)
W20-01	Solid Waste Association of North America, Calif Chapters	William	Merry	The comment is the same as comment W18-02, with the exception that the commenter doesn't insert the word "current".	See response to W18-02.	No	Section 18943(a)(4)(A)

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W21-01	Regional Council of Rural Counties (RCRC)/ ESJPA	Mary	Pitto	<p>The ESJPA and the pilot project counties are concerned with the interpretation of “reasonably convenient” in the above provision. It is our collective belief that “reasonably convenient” means there is some opportunity provided in (preferably) retail facilities in each county. The retailers and consumers in our counties pay the fee and deserve to receive a direct benefit. Our counties are nonetheless willing to cooperate and consider facilitating these opportunities at their public solid waste collection facilities by providing space for collection. However, our counties should not and cannot expend additional funds to make this endeavor work.</p> <p>We suggest that the above provision be amended to read:</p> <p>“Description of how each consumer that pays a carpet stewardship assessment, including but not limited to those in rural areas, will have <u>a reasonably convenient an opportunity</u><del>(ies)</del> <b>located in each county that has a carpet retailer or desires</b> to <del>conveniently and properly</del> manage their post-consumer carpet.” (bold underline show new revision)</p>	CalRecycle staff agrees to incorporate the revised text. This helps define what is meant by convenient while still providing flexibility for implementation.	Yes	Section 18943(a)(5)(E)
W21-01	Regional Council of Rural Counties (RCRC)/ ESJPA	Mary	Pitto	AB 2398 Section42972.5 (b) provides that CARE shall spend revenues from the assessment to implement early action measures that are designed to achieve measurable improvements in the landfill diversion and recycling of post consumer carpet. The rural pilot project should qualify as an early action measure so that the infrastructure and transportation costs are determined and paid for by the program.	AB 2398 does not provide CalRecycle with oversight on how the early action funds are distributed, which is outside of the plan approval process and occurs prior to plan approval.	No	

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W22-01	County Sanitation District of LA County	Charles	Boehmke	<p>The proposed definition of "diversion" found in Section 18941(f) of the carpet stewardship regulations needs to be changed to be consistent with the legislation. PRC Division 30, Sections 40124, 40190.1, and 40192(b), define "diversion" as reducing "disposal" defined as the management of solid waste through landfill disposal or transformation. This is clearly not the intent of the legislation. PRC Section 40 192(b) allows for alternative definitions of "disposal" when appropriate such as for consistency with legislative intent. Therefore, we request that the proposed definition be modified as shown below:</p> <p>"(f) "Diversion" or "divert" means activities which reduce or eliminate the amount of solid waste disposed <del>at permitted landfills for purposes of Division 30, including Article 1 (commencing with Section 41780) of Chapter 6 of the Public Resources Code</del> or is otherwise managed in a manner consistent with the state's hierarchy for waste management practices pursuant to Section 40051."</p>	CalRecycle agrees and incorporated the comment. Also see response to W18-01.	Yes	Section 18941(f)